

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO.1082 OF 1987
ALONGWITH
CIVIL APPLICATION NO. 191 OF 1990**

1. Kashinath Tukaram Shelar,
since deceased by his heirs
1(A). Arun Kisan Londhe,
1(B). Deepak Ramchandra Pawar.
2. Oriental Insurance Co.Ltd.
Pune-30.

.... Appellants.

Versus.

1. Chandrakant Dagadu Tupe.
2. Shamsunddin Hazubhai Attar.

.... Respondents.

Shri P.K.Hushing for the Appellants.

Shri R.G.Ketkar for the Respondent No.1.

Shri Pethe holding for Shri R.S.Deshpande for the
Applicant in Civil Application No.191 of 1990.

CORAM : ABHAY S. OKA, J.

DATED : 21st & 26th April, 2006.

ORAL JUDGMENT.

1. On the last date submissions of the learned
Counsel appearing for the parties were heard and today
the Appeal is kept for dictation of Judgment.

2. The original Opponents Nos.2 and 3 in a Claim
Petition filed under section 110A of the Motor Vehicles
Act, 1939 have taken exception to the Judgment and Award
passed by the learned Member of the Motor Accident
Claims Tribunal on 30th September 1987. The Respondent

No.1 herein is the original Claimant. The learned Member of the Tribunal held that Respondent No.1 is entitled to the total compensation of Rs.2,30,000/- from the original Opponents Nos.1 and 2 together with interest at the rate of 12% per annum from the date of the application. The learned Member held that the Appellant No.2-Insurance Company was liable to honour the award made against the insured i.e. Appellant No.1 the extent of Rs.1,50,000/- with interest and proportionate costs.

3. With a view to appreciate the submissions made by the learned Counsel appearing for the parties, it will be necessary to briefly refer to the facts of the case. The Respondent No.1 claims to be an agriculturist holding agricultural land at Hadapsar, District Pune. According to the case of the Respondent No.1, he used to go to agricultural lands by his motor cycle. At the mid-night of 25th May 1985, he was returning from Hadapsar to his residence at Pune. According to the case of the Respondent No.1, he was driving the motor cycle by left side of the road. According to him, when he crossed a flyover bridge on Pune-Solapur Road, one tempo came from the side of Pune. The said tempo was at the relevant time driven by the Respondent No.2 (original Opponent No.1) herein. The Appellant No.1 herein was the owner of the tempo at the relevant time. On the date of the accident, the Tempo was validly

insured with the Appellant No.2 under the third party insurance policy. According to the case of the Respondent No.1, the Tempo came in a very high speed on the wrong side and the driver was not able to control the Tempo. According to the case of the Respondent No.1, after noticing the Tempo coming from opposite side, he took his motor cycle to the left side of the road. However, the accident could not be avoided and the Tempo which was coming at a very high speed dashed against the motor cycle. As a result of the accident, the Respondent No.1 was thrown away on the road and became unconscious. He suffered number of injuries as a result of the accident. According to the case of the Respondent No.1, he was unconscious for 48 hours and he lost control of his mental faculty for atleast one month. He was admitted in Ruby Hall Clinic at Pune between 26th May 1985 and 6th June 1985. According to the Respondent No.1 he is a graduate of Pune University. According to his case, he was growing sugarcane and different kinds of vegetables in his agricultural land which admeasures about 10 acres. According to him the agricultural land was fetching income of Rs.75,000/- to Rs.80,000/- per year. According to the Respondent No.1 he suffered fracture in the right leg and hand and one of his nerve was damaged. According to him he suffered head injuries and other injuries. It is his case that on account of the injuries sustained in the accident his right hand has become paralytic and it cannot be moved.

According to his case, there is no scope for improvement. The case of the Respondent No.1 is that he had to undergo a surgery in Ruby Nursing Home for fracture of his right leg. He claimed a total compensation of Rs.5 lakhs.

4. The driver of the Tempo remained absent and he did not file any written statement. The Appellant No.1 filed written statement. The Appellant No.1 admitted that he was the owner of the Tempo and at the relevant time the Tempo was insured with the Appellant No.2. He, however, denied that the Tempo was being driven in a very high speed in a rash and negligent manner. According to the case of the Appellant No.1, the Respondent No.1 at the relevant time was not mentally fit to drive the motor cycle at the mid night. According to him, the Respondent No.1 was driving the motor cycle in an excessive speed and after crossing the bridge when he came down the slope, he increased the speed and the motor cycle went out of control and it was Respondent No.1 who came on the wrong side and gave a dash to the Tempo. Notwithstanding the efforts made by the driver of the Tempo to turn his vehicle to the left side, the accident could not be avoided. The Appellant No.2 opposed the claim petition without denying the existence of the policy of insurance on the date of the accident.

5. The learned Counsel appearing for the Appellants has taken me through the notes of evidence and other material on record. He submitted that the negligence on the part of the driver of the Tempo was not at all established. He submitted that the Respondent No.1 came out with a false case. He submitted that the accident occurred due to the negligence on the part of the Respondent No.1 and therefore, the Respondent No.1 was not entitled to claim compensation. He submitted that though the Tribunal rejected the evidence of Dr.Vilas Prabhakar Jog, the Tribunal held that the Respondent was entitled to receive the full amount based on the evidence of Dr.Jog. He submitted that in any event there was no evidence of any permanent disability suffered by the Respondent No.1 and therefore, the compensation awarded is exorbitant. He submitted that the Tribunal has committed an error in granting damages on account of expenditure likely to be incurred on the fare of autorickshaw and in any event, interest could not have been awarded on the said amount. The learned Counsel for Respondent No.1 supported the impugned Judgment and Award. He submitted that the compensation payable is just and proper and no interference is called for.

6. Civil Application No.191 of 1990 has been filed by one Dr.Vilas Prabhakar Jog, who was a witness examined by Respondent No.1. The said application is

taken out with a prayer to expunge the remarks against Dr.Jog made in paragraphs 30, 32 and 33 of the impugned Judgment and Award. The learned Advocate appearing for the Applicant in the said Application mainly submitted that very drastic adverse observations have made against the Applicant which were not at all warranted by the evidence on record. He pointed out that before recording any adverse remarks against the Applicant, the learned Member of the Tribunal should have heard the Applicant. He submitted that on the basis of the observations/findings recorded in the impugned Judgment, disciplinary proceedings have been initiated against the Applicant before the Maharashtra Medical Council, Mumbai. He pointed out that by an ad-interim order, the said proceedings have been stayed by the Court. The said application is opposed by the Appellants by pointing out the justification for the said observations.

7. The Respondent No.1 has filed cross objections

for enhancement in compensation. The main submission in support of the cross-objection is that the medical evidence on record shows that the permanent disability of the Respondent No.1 was to the extent of 90% and the learned Member of the Tribunal has committed an illegality by not accepting the opinion of the expert. The cross objection is opposed by the learned Counsel appearing for the Appellants by pointing out that the

compensation which is already granted is very excessive.

8. I have considered the submissions made by the learned Counsel appearing for the parties. It will be necessary to refer to the oral testimony of the witnesses. The first witness examined by Respondent No.1 is one Shri Vasant Pasco Pinto, who claims to be an eye witness. The said witness stated that at the mid-night of 25th May 1985 he was going towards his house in an auto-rickshaw. He saw a tempo owned by the Appellant No.1 coming from backside and went ahead of the auto-rickshaw. Thereafter he heard some sound of accident. He noticed that the tempo had stopped. According to him the auto-rickshaw in which he was travelling also stopped. He stated that he informed the Police Officer about the accident. He stated that when the said Tempo overtook the auto-rickshaw in which he was travelling, the tempo was going in a zig-zag manner. He stated that when he stepped out of the auto rickshaw he noticed that one man had suffered injuries in the accident. He identified the Respondent No.1 before the Tribunal. In the cross-examination, he denied that he was not present at the time of the accident. Very little turns on the testimony of this witness as he has not actually seen the impact. All that he saw was that when the tempo overtook the auto-rickshaw, it was going in a zig-zag manner.

9. The Respondent No.1 was examined as witness

No.3. He deposed that at mid-night of 25th May 1985, he was returning to his house from his farm at Hadapsar by his Motor cycle. He stated that when he came near Kalubai Temple he found that one Tempo was coming towards him in a zig-zag manner. He stated that he was on the left hand side of the road and that he stopped his vehicle. He stated that the tempo gave a dash to him. He stated that he was unable to state as to what transpired thereafter as he lost consciousness.

10. He stated that he gained consciousness only

after a period of 1-1/2 days. He stated that for about 1-1/2 months he was not able to recognise the persons visiting him. He stated that after 10 to 12 days, he was taken to his home. He stated that Dr.Jog was giving treatment to him at his residence. He stated that his right hand was not making movement at all. He stated that he was given physio-therapy treatment of one Dr.S.H.Tahelia. He stated that his right leg was kept in a plaster. A small opening was made in the plaster for the purpose of dressing the wound which was on the right knee. According to him as the injury was not properly healed, Dr.Jog performed a plastic surgery. He stated that on the date of recording his evidence, his right hand had no movement and he could only move his fingers and right wrist. He stated that he was required to use knee case for the purpose of protecting his right

leg. He stated that he was unable to drive the motor cycle and he is required to take help even for putting on his clothes. He stated that his right leg cannot bend fully and it is difficult for him to sit for answering call of nature. He stated that Dr.Jog treated him at his residence for about one year. He stated that thereafter whenever he was required to visit any place he had to travel either in an auto-rickshaw or by a vehicle belonging to others. He stated that only at the beginning of the year 1987 he started going to his farm for cultivation and supervision. He claims that his annual income was Rs.50,000/- to Rs.60,000/- by sale of vegetables and Rs.35,000/- to Rs.50,000/- by sale of sugarcane. He stated that he was required to incur expenditure of Rs.45,000/- to Rs.50,000/- per year on agricultural operations.

11. In the cross-examination he denied the suggestion that because he had very heavy meals, he was in a haste to reach home and therefore, he was driving his vehicle in a fast speed. According to him, at the spot of the accident, the width of tar road is 30 feet. He stated that there is a katcha road of 7 feet on both the sides of the road. He denied the suggestion that Dr.Jog did not come to his home or that he was going to Dr.Jog for treatment.

12. The Appellant examined Shamsuddin Hasubhai

Attar, driver of the tempo as a witness. He stated that he was driving the tempo in a slow speed and all of a sudden a motor cycle gave a dash to his tempo. He stated that he did not stop at the place of impact as he apprehended that the people around him would beat him. He stated that his cleaner by name Bhau Bansode was the only person present in the tempo at that time. In the cross examination he was confronted with the statement recorded by the Police in which he has stated that the accident took place while he was over taking a vehicle. It is pertinent to note that the driver of the tempo has not at all stated that the motor cycle came on its wrong side. He has also not deposed to the effect that the tempo was being driven on its left side. The driver of the tempo has not at all stated as to whether he had noticed the motor cyclist coming from opposite side. He has simply stated that the motor cycle came in a fast speed and dashed against the tempo. He has not at all described in detail the manner in which the accident took place according to his case. The evidence of the driver hardly inspires any confidence. The cleaner Bhau Bansode has been examined as a witness and he has simply stated that the motor cycle came from the opposite side and gave a dash. He stated that the tempo was not stopped after the accident. He stated that one constable was on the road and he along with the driver informed the Constable about the accident. The driver of the tempo has stated that one constable stopped the

vehicle on the way and the constable took him to the Police Station. Even the cleaner has not stated that the tempo was on the correct side of the road and the motor cycle came on the wrong side of the road. The cleaner was confronted with the statement given by him to the Police to the effect that the driver of the tempo took the tempo to the right side of the road. In my view the evidence of both the said witnesses does not improve the case of the Appellants. After considering the entire evidence on record the only conclusion which can be drawn is that the accident occurred due to the rash and negligent driving on the part of the driver of the tempo.

13. Now, it will be necessary to refer to evidence of Medical Practitioners. Dr.Vilas Prabhakar Jog was examined as P.W.4. He stated that he holds Master's degree in orthopaedic surgery. He stated that on 26th May 1985, he saw the Respondent No.1 in Ruby Hall Clinic. He described the injuries sustained by Respondent No.1. He stated that though the Respondent No.1 was taking treatment in Ruby Hall Clinic, he was called as an extra Doctor. He stated that his wife was also having a hospital where she was having her private practice and he was helping her in the practice. According to him the Respondent No.1 received injury of brachial plexus on his right upper hand. According to him, the Respondent No.1 had a fracture of right tibia

and there was internal bleeding in right knee. There were multiple abrasions on his face and other parts of the body. He claimed that after Respondent No.1 was discharged from Ruby Hall Hospital, he treated him for about a year. He advised Respondent No.1 to take physio-therapy. According to him in August 1985, a skin grafting surgery was done on his knee joint. He proved in evidence a bill in the sum of Rs.7770/- which was allegedly signed by his wife. He had given him a certificate which was at Exh.52 in which he had recorded that Respondent No.1 had over 90% disability. In the cross examination, he admitted that since the treatment was given at home, the case papers were not maintained. He admitted that he was not allowed to do a private medical practice. He also admitted that his wife is not an orthopaedic surgeon. He stated that as the shoulder and the arm of the Respondent No.1 was unable to function, the permanent disability is 70% and due to the fracture of knee joint, the permanent disability is 20% and therefore, the total permanent disability is 90%.

14. So far as medical evidence is concerned, the original Opponents have examined some of the witnesses. Witness No.3 for the Opponents is Dr.Dilip Subhanmal Kiyawat. He was working as a Neuro Surgeon in the Ruby Hall Clinic from April 1985. He had examined the Claimant Chandrakant on the very day on which he was admitted. He stated that at that time Chandrakant was

not fully conscious and was drowsy. According to him, neurologically he had no much problem. On clinical examination, he came to the conclusion that there was brachial plexus injury. Later part of his deposition has been recorded in question and answer form. He confirmed that there was a weakness in the limb of the Respondent No.1 and there was no improvement in the condition of his limb. In the cross-examination, the said witness stated that for the type of injury which was sustained by the Respondent No.1, the patient is normally referred to a Physio-therapist and he stated that if such an injury is not cured within a period of one year, it is supposed to be a permanent disability.

15. Dr.Eknath Purshottam Patil has been examined by the Opponents. He stated that the Claimant was hospitalised in Ruby Hall Clinic from 26th May 1985 to 6th June 1985. He described the injuries found by him on the person of Respondent No.1 on 26th May 1985. He admitted that brachial plexus injury was a major injury. He stated that for treating the said injury, arm was kept in a sling till the time of discharge. He stated that the extent of injury to the limb will depend on the site and the nerves to which an injury is caused. He states that if all the nerves of brachial plexus are injured, the entire upper limb will be paralysed. In the cross-examination he stated that on 27th May 1985 a surgery was required to be done on the right knee joint

of the patient. His injuries were cleaned and the fractured bones were fixed with screws and plaster was put. In the cross-examination, he stated that Dr.Jog was not present at the time of treatment but visited the patient as his friend.

16. It will now be necessary to refer to the finding recorded by the Tribunal as regards the injuries sustained by the Respondent No.1. According to the learned Member Dr.Jog was quite unethical in giving deposition in favour of the Claimant and his version has been falsified by the witness Dr.Eknath Patil. A finding was recorded that there is no reason why evidence of Dr.Eknath Patil should not be believed. While dealing with the evidence of Dr.Jog, he came to the conclusion that Dr.Jog gave false testimony as he was a friend of the Claimant. He has observed that Dr.Jog, who is an orthopaedic surgeon should not have given false testimony. The learned Judge observed that the bill at Exh.51 in the sum of Rs.7770/- dated 30th May 1987 is of Dr.Jog. In paragraph 33 of the Judgment the learned Member has disbelieved the version of Dr.Jog regarding the permanent disability suffered by the claimant. The learned Member held that there was no document forthcoming from Ruby Hall Clinic showing the disability. He recorded a finding that the evidence of Dr.Jog was like an opinion.

17. The evidence of Dr.Jog will have to be discussed

minutely as there is an application made for expunging the observations/remarks made by the learned Member of the Tribunal against Dr.Jog. It must be noted here that so far as the qualifications of Dr.Jog are concerned, there is hardly any dispute. The learned member of the Tribunal appears to have been influenced by the fact that Dr.Jog was not permitted to have private practice and still he appeared to have treated the Claimant. According to the Claimant, after his discharge from the Hospital, Dr.Jog used to visit his residence and used to treat him. The learned Judge has observed that the bill for the sum of Rs.7770/- has been issued by Dr.Jog. The learned trial Judge has expressed surprise as to how such a bill could have been issued by Dr.Jog when he was not entitled to practice privately. A perusal of the bill at Exh.51 shows that it is issued under the name of Dr.Mrs.S.V.Jog on the printed bill of Jog Hospital. The bill discloses that the Claimant was admitted in the said hospital on 15th June 1985 and was discharged on 25th June 1985. The bill relates to charges of the procedure of skin grafting. The amounts charged under the said bill are on account of consultation charges, charges for operation, charges of Anaesthetist and Assistant Surgeon, theatre charges, charges for nursing home, injections, i.v.fluids and dressings, follow-up, and physio-therapy and visits. It is not possible to jump to the conclusion that the said bill was issued by

Dr.Jog himself. Coming back to the evidence of Dr.Jog, he has stated that he saw the Claimant in the Ruby Hall Clinic on 26th May 1985. He has stated that his wife runs a Hospital and he was helping her. He has referred to the bill at Exh.51 and has stated that it is signed by his wife. In the entire evidence of Dr.Jog, he has not claimed that he charged any amount to the Claimant. Reference to the charges in his deposition is only to the bill Exh.51 which is issued under the signature of his wife. He has stated in his evidence that after the Claimant was discharged from Ruby Hall Clinic, he gave treatment to the Respondent No.1 for about one year. It is not the case of Dr.Jog that he charged any amount for the said treatment.

18. So far as the Claimant is concerned, he has stated that Dr.Jog was giving him treatment at his home. In the examination-in-chief, the Claimant has not claimed to have paid any amount by way of fees to Dr.Jog save and except the amount of bill at Exh.51. As stated earlier, the witness examined by the Opponents has stated that Dr.Jog visited the Claimant in the Ruby Hall Clinic as his friend and had not given any treatment. From conjoint reading of the deposition of the Claimant, the deposition of Dr.Jog and the deposition of Dr.Eknath Patil, it is very clear that Dr.Jog did not treat the Claimant while he was admitted in Ruby Hall Clinic. Dr.Jog in his deposition and in particular paragraph 6

has stated that in August 1985 the skin grafting was done to right knee joint. In this deposition he has not specifically stated that the skin grafting was done by him. He has merely referred to the procedure of skin grafting and the bill which is signed by his wife. There is no suggestion given in the cross-examination that the skin grafting was done by him. There is a reference to some procedure done by Dr.Jog is in paragraph 4 of the Claimant's deposition wherein he has stated that Dr.Jog has done the plastic surgery on the wound. Except this all that the Claimant stated was that Dr.Jog has treated him at his residence.

19. Dr.Jog in Civil Application No.191 of 1990 prayed for expunging the remarks made against him in paragraph 30, 32 and 33 of the Judgment. In paragraph 30, the learned Member of the Tribunal has stated that Dr.Jog has given false evidence by stating that he had examined the Applicant. As stated earlier, Dr.Eknath Patil who is examined by the opponent has stated that Dr.Jog visited the patient in Ruby Hall Clinic as a friend. All that Dr.Jog in his examination-in-chief has said is that he visited Ruby Hall Clinic and examined the original Claimant. He has stated that after the original Claimant was discharged, skin grafting was done on the knee joint and he gave the disability certificate. Thus it is not the case of Dr.Jog that he treated the Applicant in Ruby Hall Clinic. Therefore,

the observation made by the learned Member in paragraph 30 of the Judgment that false evidence was given by Dr.Jog does not appear to be correct. The learned Member has observed that he has given false testimony to such an extent which does not benefit his profession. In my view even the said observation was uncalled for. In paragraph 32 of the Judgment, the learned Member has accepted the submission of the Advocate appearing for the original Opponents that Dr.Jog lost all professional ethics. The said observation was also uncalled for. The Tribunal with a limited jurisdiction was not expected to record a finding whether the conduct of Medical Practitioner or Doctor was consistent with the professional ethics or not. In paragraph 33 of the said decision, the learned Member holds that Dr.Jog was prone to give false evidence as the Applicant was his friend. In my view it cannot be said that false evidence was given by Dr.Jog. In any event, the remarks in the aforesaid paragraphs affect the character of Dr.Jog and the same may ultimately affect his reputation. No opportunity was made available to Dr.Jog to defend himself against such remarks. Hence in view of the decision of the Apex Court in the case of State of U.P. v/s. Mohd. Naim (AIR 1964 SC page 703), the application made by Dr.Jog will have to be allowed. So far as the alleged professional misconduct is concerned, it is for the competent authority to decide. The findings of the Tribunal cannot be read to mean that any

professional misconduct on the part of Dr.Jog has been established.

20. All that can be said from the evidence of Dr.Jog is that disability certificate issued by Dr.Jog cannot be relied upon as no corresponding certificate has been issued by the Doctors of Ruby Hall Clinic where the Claimant was actually treated after the accident. Therefore, the case of permanent disability made out by the original Claimant cannot be accepted. The fact remains that several injuries were suffered by the Claimant which are disclosed by Dr.Eknath Patil in his evidence. I have already referred to the said injuries. The evidence of the said Doctor discloses that one of the injuries was a major injury. The evidence also discloses that on 27th May 1985 an operation was required to be performed on his right knee joint and plaster was applied. In the evidence of Dr.Kiyawat who was examined by the Opponent, he has stated that the type of injury which was suffered by the Applicant was required to be treated by a physio-therapist and if the said injury is not cured within a period of one year, it is supposed to be a permanent disability. In the evidence of the Applicant, he has stated that his right hand has no movement and he can only move fingers and the right wrist. He has stated that he has to use a knee case for the purpose of balance of his right leg. Though there is no clear evidence as regards the

percentage of disability of the Applicant, there is a clear evidence regarding the serious injuries sustained by him.

21. I have already held that so far as the negligence is concerned, the accident had occurred because of the negligence on the part of the driver of the Tempo. Now the question which arises is what should be the quantum of compensation. Looking to the nature of injuries suffered by the Applicant, a sum of Rs.1 lakhs on account of general damages has been awarded by the learned Member. The Applicant was required to be hospitalised and was also required to undergo surgery for the fracture suffered by him. It is well settled that while calculating the compensation in such a case, there is bound to be some element of guess work. The evidence of the Applicant regarding the handicap to his right hand is not seriously challenged. Moreover, the injuries sustained by the Respondent No.1 have been brought on record by Dr.Eknath Patil who was examined by the Appellant. One of the injuries sustained by the Respondent No.1 is a major injury. Therefore, considering the evidence on record, the sum of Rs.1 lakh granted by the Tribunal towards special damages must be held as just and reasonable.

22. In paragraph 46 of the Judgment, the learned Member has held that the total amount of bill for

physiotherapy comes to Rs.18,400/-. The medical practitioners who are examined by the opponents have disclosed that the treatment of physiotherapy was necessary for the injury sustained by the Claimant. The physiotherapist has been examined who has proved the bills issued by him. In paragraph 46 the learned Member has accepted the total amount of the bill of Rs.18,400/-. That part of the order cannot be interfered with. So far as the bill issued by Jog Hospital is concerned, it is in the sum of Rs.7770/-. The said bill is proved by Dr.Vilas jog who has identified the signature of his wife on the bill. There are large number of bills (Exh.82) produced by the Applicant of the expenses incurred on medicines. The Applicant was admitted to Ruby Hall Clinic on 26th May 1985 and he remained as indoor patient in the said Hospital till 6th June 1985. In the meantime he underwent a surgery. In a matter like this, it is impossible for the Claimant to procure and keep every bill or voucher of the expenditure incurred on purchase of medicines, other articles and for providing special diet. A broad calculation is required to be made in that respect. The learned Member has accepted that the expenses incurred on this count are Rs.11,866.04. The said figure is arrived at on the basis of the concession given by the Advocate appearing for the Insurance Company. In my view considering the documents on record and the fact that the Applicant was admitted in Ruby

Hall Clinic for 10 days and the fact that he has to take continuous treatment thereafter, a total sum of Rs.40,000/- deserves to be granted to the Claimant on account of expenditure incurred on treatment. This will cover the Hospital bill of Dr.Jog, charges of physio-therapist, special diet etc.

23. The learned Member of the Tribunal has awarded a sum of Rs.90,000/- as special damages on the ground that the Applicant will have to incur expenditure on auto-rickshaw and other vehicles at the rate of Rs.10/- per day. He has observed that as a result of injuries sustained in the accident, the Applicant will not be in a position to use his motor cycle for going to his agricultural lands. Though the age of the Applicant was 45 years, the learned Judge has applied the multiplier of 25 years. Considering the fact that the age of the Applicant was 45 years, multiplier of 10 ought have to be applied. Applying multiplier of 10 for taking the monthly expenditure of Rs.300/- on transport, the amount comes to Rs.36,000/-. Thus the amount awarded on this count by the trial Court is excessive. Thus the total compensation will be around Rs.1,76,000/-. Taking a round figure, the total compensation comes to Rs.1,80,000/- instead of Rs.2,30,000/- awarded by the Tribunal. The learned Advocate for the Appellant rightly submitted that interest is not payable on the sum of Rs.36,000/-. I find that no amount has been

specifically awarded on account of loss of income. Moreover while calculating transport charges, the rates prevailing in the year 1987 have been taken into consideration. In view of these peculiar facts, no interference is required to be made in the award of interest.

24. Accordingly the following order is passed:

- i) The Appeal is partly allowed, and the Cross objection is dismissed.
- ii) The impugned Award is modified by holding that the total compensation to which the Respondent No.1 is entitled to will be Rs.1,80,000/- instead of Rs.2,30,000/-.
- iii) Rest of the Award is maintained as it is.

C.A.No.191 of 1990.

- i) For the reasons recorded above, Civil Application is allowed in terms of prayer clause (b).
- ii) So far as the proceeding initiated by the Maharashtra Medical Council is concerned, it is for the Medical Council to consider the question

of any professional misconduct on the part of the Applicant on its own merits without being influenced by the findings of the Tribunal.

- iii) So far as prayer clause (c) of the Application is concerned, the same is not granted.

Judge.